IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2836 of 2001

with

SPECIAL CIVIL APPLICATION No 3077 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUKHIBEN VASTIMAL SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2836 of 2001

MR MUKESH R SHAH for Petitioner No. 1

MR RM CHAUHAN ASSTT GOVERNMENT PLEADER for Respondent No. 1

MR BHARAT R PANDYA for Respondent No. 2

RULE SERVED for Respondents No. 2,4

UNSERVED-EXPIRED (R) for Respondent No. 3

MR BS PATEL for Respondent No. 5

MRS RANJAN B PATEL for Respondent No. 5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/10/2001

ORAL JUDGEMENT

Rule. In both these petitions, Mr.R.M.Chauhan, learned AGP appearing on behalf of the respondent No.1 and Mr.Bharat R. Pandya, learned advocate for the respondent No.2 so also Mr.B.S.Patel, learned advocate for the respondent No.5 waive service of Rule on behalf of the respective respondents.

This Court has issued notice to the respondent Nos.3 & 4 and the service of notice has been served on respondent No.4, whereas, respondent No.3 has expired. However, learned advocate Mr.R.N.Shah requests this Court to permit him to delete respondent Nos.3 & 4 from both these petitions. Permission as prayed is granted.

#. In the present petition, this Court has issued notice on 27th April, 2001 and status quo, which has been extended by this Court from time to time and ultimately on 27th August, 2001, the status quo granted earlier is ordered to be continued till further order. Thereafter, on 6th Sept., 2001 this Court has while issuing RULE ordered that during the pendency of the present petition, the Collector, Bharuch was directed to consider the representation of the petitioner dated 20th March, 2001 Annexure-D to this petition, within 15 days from today and further directed to place on record such decision that may be taken by the district Collector, Bharuch on or before 24th September, 2001.

#. The brief facts of these two petitions are narrated as under :-

So far as Special Civil Application No.2836 / 2001 is concerned, Ankleshwar Municipality by Resolution No.131 dated 30th August, 1978 resolved to give the land to one Hiralal Chokshi on lease for a period of 10 years. That on 30th October, 1980 the Municipality resolved to sell the land to said Hiralal Choksi and thereafter the present petitioner has purchased the said land from Hiralal Chokshi on 17th March, 1981. However, the respondent No.2 - Bhadrakant H. Shah after period of 18 years approached the Collector, Bharuch filing Appeal No.1/99 and the District Collector, Bharuch has stayed the order passed by the Municipality on 30th October, 1980 and also set aside the said resolution as well as subsequent sell in favour of the petitioner dated 17th March, 1981 and also directed the Municipality to remove

encroachment. Thereafter, present petitioner has approached the State Government by way of Revision Application but the revisional authority has rejected the revision application on 1st July, 2000 while confirming the order passed by the Collector, Bharuch. Thereafter, the petitioner approached this Court by way of Special Civil Application No.1230/2001. However, said petition was withdrawn by the petitioner with a view to make representation to the concerned authority and mean while, this Court has protected the petitioner for a period of two weeks. The grievance of the present petitioner is that though the petitioner has already made representation - Annexure-B dated 20th March, 2001 to the Collector, Bharuch but his representation is not decided so far and therefore, because of inaction on the part of the District Collector, Bharuch, present petition has filed before this Court.

In Special Civil Application No.3077 / 2001, the brief facts are that pursuant the sale deed between Hiralal Chokshi and the petitioner dated 17th March, 1981 in respect of the land in question, necessary entries were recorded in the revenue record and therefore, the respondent No.1 has challenged the said entry bearing City Survey No.4699 by filing the Appeal before the Assistant Collector, Bharuch who has allowed the Appeal No.16/1999. However, that order has been challenged by the petitioner preferring CTS Appeal No.11/1999 before the Collector, Bharuch who also dismissed the same on 22nd March, 2000. Thereafter, Revision Application No.8/2000 was preferred before the revisional authority which also came to be rejected by order dated 3rd March, 2001. Therefore, the order passed by the revisional authority is under challenged in this petition.

#. These two petitions are related to very petitioner and the subject matter of challenge is in respect of the very same land. In the first petition, the facts are based on the events that the Resolution passed by the Municipality in favour of one Hiralal Chokshi and thereafter the land in question has been purchased by the petitioner which has been set aside by the concerned authority and ultimately the matter has been challenged upto revision by the petitioner. Whereas, in the second petition, pursuant to the sale deed between said Hiralal Chokshi and the petitioner, necessary entries were made, which was challenged by the respondent No.1 - Bhadrakant H. Shah and the Asstt. Collector, Bharuch has allowed the said challenge and set aside the entry. Thereafter, further appeal and revision application preferred by the petitioner have also been dismissed.

It is noted that in these two petitions, initially this Court has issued notice on 27th April, 2001 and also granted interim relief in favour of the petitioner. The interim relief has been extended by this Court till further orders by order dated 16th June, 2001.

#. Learned advocate Mr.R.N.Shah appearing on behalf of the petitioner has submitted that in Special Civil Application No.2836 / 2001, the Revenue authority has decided the matter by arriving at conclusion that the land in question belongs to the Government. Therefore, he submitted that if the land is declared to be belonging to the Government and the petitioner is having possession of the land in question on the basis of the sale deed dated 17th March, 1981 and since then, he is occupying the land in question and also enjoying the land and therefore, the petitioner is in continued long possession which is required to be regularised by the concerned authority and for that representation dated 20th March, 2001, which is pending before the District Collector, Bharuch but the District Collector, Bharuch has not decided said representation because of the interim order passed by this Court in Special Civil Application No.3077 / 2001. However, learned AGP Mrs.R.M.Chauhan has tendered a letter dated 20th Sept.,2001 and 25th Sept., 2001 issued from the office the District Collector, Bharuch, wherein it is pointed out by the District Collector, Bharuch that on account of stay operating in Special Civil Application No.3077/2001, it is very difficult for the District Collector, Bharuch to examine and decide the representation of the petitioner for regularisation of the land in question. Therefore, he has not decided the representation because of the interim order passed by this Court in Special Civil Application No.3077/2001. However, learned advocate Mr.R.N.Shah has submitted that without considering the effect of the orders passed by the Revenue Authority and the fact that the petitioner is having the possession of the land in question on the basis of the sale deed and if ultimately the land is declared by the revenue authority as the holding belongs to the Government and therefore the petitioner is entitled to have benefit of regularisation for which the Collector is competent authority to pass appropriate orders in accordance with law.

#. Mr.Bharat Pandya, learned advocate appearing on behalf of the respondent - Bhadrakant H. Shah in these two petitions has submitted that the petitioner has not made clear statement or averments. He further submitted that this Court has not directed the petitioner to file

representation and further this Court has not directed the District Collector, Bharuch to regularise the land in question in favour of the petitioner. However, the submission of Mr.Pandya, learned advocate is that in the list of events of the petition, the petitioner has made some incorrect averments and therefore, the petition is not maintainable. He also raised another contention that earlier petition i.e. Special Civil Application No.1230 / 2001 filed by the petitioner, was withdrawn by the petitioner and therefore, at the most, the earlier petition can be revived but no fresh petition on the same cause of action can be entertained by this Court. Therefore, he submitted that at the most, in such situation, this Court may direct the District Collector, Bharuch to decide the representation made by the petitioner on date 20th April, 2001 in accordance with law.

#. Learned AGP Mr.R.M.Chauhan appearing on behalf of the respondent - State Authorities has submitted that representation is pending before the District Collector, Bharuch which requires to be examined and decided by the concerned Collector but on account of the interim order passed by this Court in Special Civil Application No.3077/2001, the Collector, Bharuch is not able to examine and decide the representation submitted by the petitioner. Therefore, his submission before this Court is that if this Court directs the respondent - Collector to examine the representation and to pass appropriate order, in that case, the respondent Collector will certainly examine and decide the representation within some reasonable time.

#. I have considered the submissions made by the learned advocates for the respective parties. The controversy involved between the parties is of very narrow compass. The question is that rightly or wrongly, the petitioner is having sale deed dated 17th March, 1981 in his favour. However, ultimately the said sale deed has been set aside by the revenue authority. But fact remains that the petitioner is in possession of the land in question since 1981. Therefore, considering all these aspects of the matter so also the Government policy to regularise such encroachment for which there exists continued long possession and when such possession has been enjoyed by the petitioner without any obstruction and for that petitioner, has already made representation dated 20th March, 2001 which admittedly remained undecided. Therefore, considering all these factual aspects of the matter and considering the fact that pursuant to the sale deed dated 17th march, 1981, the necessary entries were

made in the revenue record by the concerned authority, however, said entry was challenged by Bhadrakant Shah and ultimately the said entry has been cancelled by the revenue authority consequent to cancellation of sale deed and the revenue authority held that the disputed land in question belongs to the State Government, in view of this Court, if the respondent Collector, Bharuch is directed to examine and decide the representation which has been submitted by the petitioner on 20th March, 2001, will meet the ends of justice.

#. Therefore, in light of the fact that the petitioner has been in continued long possession of the land in question and he is rightly or wrongly enjoying such possession of the land in question since 1981 on the basis of the sale deed, it is directed to the District Collector, Bharuch to examine and decide the representation which has been submitted by the petitioner dated 20th March, 2001 within period of two months from the date of receiving the certified copy of this order and to pass appropriate order in accordance with law. The respondent - Collector is also directed to communicate such decision to the petitioner. During the pendency of this representation, it is directed to the respondents to maintain status quo in respect of the disputed land in question. It is also observed that in event of any order that may be passed by the District Collector, Bharuch, if adverse to the petitioner, the same can be challenged by the petitioner before appropriate forum in accordance with law. In light of above observations and directions, both these petitions stand disposed of accordingly. Rule issued in both these petitions stand discharged. Ad-interim relief earlier granted by this Court shall stand vacated. Directions issued by this Court will remain in force till the decision is taken by the Respondent - District Collector, Bharuch. No order as to costs. Direct Service is permitted.

Date : 30-10-2001 [H.K.Rathod, J.]

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